

# BOARD OF ZONING APPEALS

## MINUTES

**6:30 PM**

**December 19, 2012**

**City Council Chambers**

**MEMBERS PRESENT:** Leanne Cardoso, Bernie Bossio, Tom Shamberger, George Papandreas, and Jim Shaffer

**MEMBERS ABSENT:** None

**STAFF:** Christopher Fletcher, AICP

**I. CALL TO ORDER AND ROLL CALL:** Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

**II. MATTERS OF BUSINESS:**

- A. Minutes for the September 19, 2012 hearing.** Papandreas moved to approve as presented; seconded by Cardoso. Motion carried 3-0, with Bossio and Shamberger abstaining due to their absence at the September 19, 2012 hearing.
- B. Minutes for the October 17, 2012 hearing.** Papandreas moved to approve as presented; seconded by Shamberger. Motion carried 4-0, with Shaffer abstaining due to his absence at the October 17, 2012 hearing.
- C. Minutes for the November 29, 2012 hearing.** Shamberger moved to approve as presented; seconded by Cardoso. Motion carried 3-0, with Papandreas and Shaffer abstaining due to their absence at the November 29, 2012 hearing.

**III. OLD BUSINESS:** None

**IV. NEW BUSINESS:**

- A. CU12-19 / Benach / 1554 Saxman Avenue:** Request by Joseph R. Benach, Psy. D. for conditional use approval of a "Class 2 Home Occupation" at 1554 Saxman Avenue; Tax Map 32, Parcel 8; R-1A, Single-Family Residential.  
**POSTPONED BY PETITIONER**

Fletcher advised the Board that the petitioner had requested the Board to postpone this agenda item because he was unable to attend the hearing this evening and that no further action was required by the Board.

- B. V12-36 / Steptoe & Johnson / 1085 Van Voorhis Road:** Request by Robert DeRiggi of J.D. Signs, on behalf of Steptoe & Johnson, for variance relief from Article 1369.07(I) as it relates to wall signage at 1085 Van Voorhis Road; Tax Map 6, Parcels 69 and 70; B-2, Service Business District.

Fletcher read the Staff Report stating the petitioner seeks to erect a 128 square foot, illuminated wall sign for *Steptoe & Johnson* located within the WVU Suncrest Center Building of which they occupy the upper 2.5 stories with over 30,000 square feet of area and 65 attorneys and support staff. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(I)(1) provides that the maximum wall sign area in the B-2 District is determined by multiplying the storefront width in feet by 0.6. The storefront width of *Steptoe & Johnson* is approximately 160 feet. Therefore, the maximum area for the subject wall sign is 96 square feet.

It is the opinion of the Planning Division that the black outline surrounding the letters and logo should be considered a part of the extreme limits of the sign's display as it appears to form an integral part of sign's background used to differentiate the sign from the structure as provided in Article 1369.04(A) of the Planning and Zoning Code. As such, the proposed sign requires a 32 square foot variance.

Bossio recognized the petitioner's representative, Bob DeRiggi of J.D. Signs, who stated the property has a large traffic count per day of approximately 44,000 vehicles, and noted the importance of having a larger sign in order for the clients of Steptoe and Johnson to navigate and locate the business.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). The Board has granted a number of similar wall sign area variances within the Van Voorhis Road commercial corridor.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The subject property is located along one of the most heavily traveled arteries in the region (approx. 44,300 daily vehicles). Placement of the proposed signage for the Law Firm is parallel to the main road which naturally appears to limit visibility due to orientation. Compensating for visibility only by increasing sign size appears to be one of the few, if not only afforded option that would not encroaching on the building's architecture and the confined space. Increasing the sign size should allow better client recognition affording a favorable viewer reaction time to safely navigate to the Law Firm's main office destination.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Local firms in the city appear to enjoy similar, and some, larger signs than that being requested and there appears to be a number of businesses within the Van Voorhis corridor that exceed maximum sign standards. The Law Firm sign is eight (8) square feet less in area than that recently approved by the Board under Case No. V12-28 for Clear Mountain Bank, located within the same building. Since this is the only Morgantown Office for the law firm, it is beneficial when present and future clients can visually identify the firm's location while navigating. Request is additionally in part from comments of existing clients, for ease of locating.

Finding of Fact #3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

With the size limitation/location of the proposed sign, it is unlikely to interfere with vehicular or pedestrian movement, as the sign is located three (3) stories up and appears to be well fitting within the building's natural wall space, along with being comparable to other signs located nearby.

Finding of Fact #4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the variance relief requested cannot contribute to nor mitigate existing traffic congestion; will not alter the existing land use characteristics of the commercial / office building; and, will continue a commercial signage messaging characteristic that appears to be prevalent within the commercial corridor.

Cardoso moved to approve variance petition V12-36 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. DeRiggi that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- C. **V12-37 / Chestnut Mountain Ranch / 281 Don Knotts Blvd:** Request by Kevin Bode, on behalf of Chestnut Mountain Ridge, for variance relief from Article 1369.07(I) as it relates to wall signage at 281 Don Knotts Boulevard; Tax Map 39, Parcel 43; I-1, Industrial District.

Fletcher read the Staff Report stating the petitioner seeks to erect a 170 square foot wall sign on for *Chestnut Mountain Ranch Community Store* located at 281 Don Knotts Blvd. Addendum A of this report illustrates the location of the subject site.

Article 1369.07(I)(1) provides that the maximum wall sign area in the I-1 District is determined by multiplying the storefront width in feet by 0.6. The petitioner's storefront width is approximately 180 feet. Therefore, the maximum area for the subject wall sign is 108 square feet.

It is the opinion of the Planning Division that the beige background and outlining should be considered a part of the extreme limits of the sign's display as it appears to form an integral part of sign's background used to differentiate the sign from the structure as provided in Article 1369.04(A) of the Planning and Zoning Code. As such, the proposed sign requires a 62 square foot variance.

Bossio recognized the petitioner's representative, Steven Finn, who is the Director of Chestnut Mountain Ranch. Mr. Finn stated that the correct address of the property is 255 Don Knotts Boulevard. Mr. Flinn stated that the sign would be large enough for people to see from Don Knotts and would be smaller than other signs that are located along the strip.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher noted that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

"...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors..." [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). It should be noted that the petitioner has included in the application exhibits a number of nonconforming signs located in the immediate I-1 District.

Shaffer made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The building is set back approximately 200 feet from the centerline of Don Knotts Boulevard and below the grade of same.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The other businesses in the plaza appear to have signs larger than what the sign ordinance permits. Therefore a larger size appears to be consistent with the prevalent commercial signage messaging characteristics within the immediate area.

Finding of Fact #3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed sign appears to be consistent with the prevalent commercial signage messaging characteristics within the immediate area.

Finding of Fact #4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the variance relief requested cannot contribute to nor mitigate existing traffic congestion; will not alter the existing land use characteristics within the immediate mixed-commercial area; and, will continue a commercial signage messaging characteristic that appears to be prevalent within the immediate commercial corridor.

Shaffer moved to approve variance V12-37 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Finn that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- D. V12-39 / R.E. Michel / 1959 Hunters Way:** Request by Lisa Mardis of Project Management Services, on behalf of R.E. Michel, for variance relief from Article 1347.04 as it relates to setbacks and encroachments at 1959 Hunters Way; Tax Map 44, part of former Parcel 34; B-2, Service Business District.

Fletcher read the Staff Report stating that as a result of the forthcoming Mileground Road improvements by the West Virginia Division of Highways and the related roundabout facility, R.E. Michel has elected to stay within the City of Morgantown corporate limits by relocating to the subject site. Addendum A of this report illustrates the location of the subject site.

The following highlights the petitioner's development program:

- The land use classification for the R.E. Michel establishment is a "Building Materials Supplier".

- The building will be one-story and include 14,604 square feet; 2,099 square feet of which is designed for retail sales space and 12,505 is designed for product storage.
- With the exception of the maximum front setback standard, the proposed site plan observes all related setback, parking, and performance requirements.

The maximum front setback standard in the B-2 District is 30 feet. The proposed setback is 51 feet, which requires a 21-foot variance.

Due to the depth of the site, the petitioner's facility space needs, and to ensure that delivery trucks would not obstruct Hunters Way (private road), the building was moved deeper into the site than the Planning and Zoning Code permits. Additionally, the petitioner's design professional was advised during the November 11, 2012 pre-application meeting with the Technical Review Team that every effort would be required to accommodate access and maneuvering of fire trucks in the front portion of the site.

Bossio recognized the petitioner's representative, Lisa Mardis, who stated that RE Michel Company has had a presence in Morgantown since 1986. In 2006, RE Michel did a property swap with WVU to accommodate the phase II of the WVU Research Park, and relocated to the Mileground Road site. In less than six years, they have been forced to relocate another time. The former Sterling Faucet site appears to be a good fit for RE Michel, however this location creates challenges to fire truck and delivery truck accesses. Therefore, the company is asking for a variance to exceed the front setback standard which will ensure fire truck access.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Staff recommends approval as requested without conditions.

Shamberger made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The development site has frontage on three streets: Hunters Way, an un-named street, and Earl Core Road. The rear of the parcel, on Earl Core Road, includes a slope along with its narrow depth appear to require the loading bays to be placed on the building's Hunters Way frontage. To keep the delivery trailers from encroaching into the private right-of-way on Hunters Way, the building has been pushed back toward Earl Core Road. The increased front setback will also give the Fire Department sufficient area for a fire truck to the building and adequate area for a fire engine to navigate the perimeter.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The predominant development pattern on the former Sterling Faucet site and within the Earl Core Road commercial corridor does not appear to conform to the Planning and Zoning Code's desire to establish and preserve a discernible building line as intended with maximum front setback standards. Additionally, similar variance relief has been granted within the Earl Core\_Road commercial corridor including V10-26 / Auto Zone, V11-01 / Big-Pong, V11-31 / Walgreens, etc.

Finding of Fact #3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed setback appears to be consistent with the front setbacks afforded to the other commercial developments within the former Sterling Faucet Site and Earl Core Road commercial corridor. The development pattern for this area should not be detrimental to the public welfare nor impede upon adjoining property or improvements. By pushing the building towards Earl Core Road, delivery trucks will not encroach into the private access road. No significant grading will be necessary that should harm the adjoining property, the private access road, or existing utilities. The variance should not affect emergency or service vehicle access to adjacent properties. The increased front setback appears to give the Fire Department sufficient area for a fire truck to access the building and adequate area for a fire engine to navigate the perimeter.

Finding of Fact #4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The development of the vacant parcel should enhance the value of the area and accordingly contribute to the market value of adjacent structures. Granting this variance cannot improve nor mitigate traffic congestion that is already present within the area. Likewise, the approval of this variance should not adversely impact land-use characteristics of the vicinity or zoning district.

Papandreas moved to approve variance petition V12-39 as requested without conditions; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Mardis that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- E. CU12-20 / Metro Towers, LLC / University Avenue:** Request by Lisa Mardis of Project Management Services, on behalf of Metro Towers, LLC, for a conditional "Multi-Family Dwelling" use in the O-I District on University Avenue; Tax Map 14, Parcels 16, 17, 18, 20, and 21; O-I, Office and Institutional District.

Fletcher noted that one Staff Report will be presented for the three items on the Board's agenda relating to the proposed Metro Towers development. Fletcher read the Staff Report stating the petitioner seeks to raze four (4) structures along University Avenue to develop an apartment building as a part of the continued Metro Towers "campus" development. The addresses of the structures to be razed are 2575, 2577, 2585, and 2587 University Avenue. The proposed structure is referred to as the "Metro Towers North 2 Building". Addendum A of this report illustrates the location of the subject development site.

The petitioner's proposed development program details include:

- One structure that will contain:
  - 32 two-bedroom apartments
  - 2,000 square foot office space and related file room. Staff understands that the office will be utilized by the property manager responsible for the Metro Towers "campus".
  - 1,000 square foot workout/exercise facility with access and use limited to residents of the Metro Towers "campus".
  - 4,488 square feet of storage space with access and use limited to residents of the Metro Towers "campus".
- The structure will be five stories; four of which will include the 32 apartments (eight units on each story) and the lowest or basement level will include the office space, workout/exercise facility, and storage space. The three upper stories will be at or above the grade of University Avenue.
- The proposed building will be nearly identical to the architectural style of the structure that is currently under construction and visible from University Avenue, southwest of the subject development site. Said building currently under construction is known as "Metro Towers East Building".

On December 13, 2012, the Planning Commission approved Case No. S12-10-III for a Development of Significant Impact. The proposed development will also require minor subdivision approval to combine the five (5) subject parcels, which will be addressed prior to occupancy permitting.

**CU12-20 – Conditional Use petition for a "Multi-Family Dwelling" use in the O-I District.**

Table 1331.05.01 "Permitted Land Uses" of the Planning and Zoning Code provides that "Multi-Family Dwelling" uses are permitted in the O-I District with **conditional use** approval by the Board of Zoning Appeals.

On November 17, 2010, the Board approved the applicant's conditional use petition (Case No. CU10-16) to convert the previous "Office Building" use of the two (2) existing structures within the former "Grand Central Station" development into 125 one-bedroom units.

On October 19, 2011, the Board approved the applicant's conditional use petition (Case No. CU11-11) to construct two new buildings with 32 two-bedroom units per building. The "East Building" is located closest to University Avenue and the "West Building" is closest to the unopened Ensign Avenue right-of-way.

**V12-38 – Variance petition concerning setbacks and encroachments.**

The following table identifies O-I District setback requirements along with the petitioner's corresponding proposed setbacks and required **variances**. It should be noted that the petitioner's proposed site plan delineates the minimum building envelope in grey dashed lines, which demonstrates that any development on each or all of the subject parcels would require some level of variance relief from the O-I District setback standards.



Setback Standard	Requirement	Proposed	Required Variance
Maximum Front	25 feet	6 feet <i>from roof of northern most front stairs</i>	9 feet
Minimum Front	15 feet		
Minimum Side	30 feet	15.2 feet	14.8 feet
Minimum Rear	40 feet	2.2 feet	37.8 feet

**CU12-21 – Conditional Use petition for “Off-Premise Parking”**

The Metro Towers “campus” contains 308 on-site parking spaces. These spaces do not include the seven (7) parallel parking spaces along Sixth Street, which cannot be counted toward minimum parking requirements because they are within the public right-of-way and available to the general public.

The total number of multi-family dwelling units (existing, under construction, and proposed) within the Metro Towers “campus” is 125 one-bedroom units and 96 two-bedroom units. The minimum parking requirement, based on the number of units and respective bedroom composition, for the entire “campus” is 269 spaces, which leaves a surplus of 39 on-site parking spaces.

The minimum parking requirement for the proposed “North 2 Building” is 50 spaces; 48 spaces for the residential use and 2 spaces for the employees of the property management office use. Because the “North 2 Building” development site is separated from the main Metro Towers “campus” by the Sixth Street right-of-way, **conditional use** approval is required to dedicate at least 50 off-site parking spaces on the main “campus” parcels.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for the two (2) conditional use and one (1) variance petitions presented herein. However, each respective conditional use and variance petition must be considered and acted upon by the Board separately.

Bossio recognized the petitioner’s representative, Lisa Mardis of Project Management, who stated that the building will be the third to be added to the Grand Central Station, and is situated between campus and centrally located outside of the Wiles Hill neighborhood. Mardis explained that this project offers a way to moderately increase density in the area and will offer a public transit stop. The site will offer 317 beds, and the developer will offer sidewalks along the property as well as excess parking. Mardis stated that the developer would like to move the building away from the adjacent property owners in order to maintain structural integrity, safety, and the retaining wall. The tenants will be encouraged to use the service road within the development and fire department access has been previously addressed with the fire marshal.

Papandreas asked for an explanation of which direction the developer would like to move the structure. Fletcher explained that the petitioner is willing to move the building to the left or South closer to the property line.

Shamberger asked what the width of the new sidewalks along University Avenue will be. Mardis stated that the sidewalks will be six feet wide.

There being no further comments or questions by the Board, Bossio determined that the public hearing would combine the public hearings for all three related petitions. There being no objection, Bossio opened the public hearing asking if anyone was present to speak in favor of the petition. There being none, Bossio asked if anyone was present to speak in opposition to the request.

Bossio recognized Helene Lafata who stated that she is the co-owner of the neighboring property addresses as 2589 University Avenue. Ms. Lafata asked how many feet the developer plans to move the structure back from the property line. Fletcher explained that once the buildings are razed, the developers will have a civil engineer study the site to determine how far South the building can be moved further away from Ms. Lafata's properties and that the exact distance will not be known until the developer's geo-technical analysis is completed.

Lafata specified that she wants the building moved as far away from her property line that is possible.

Lafata stated that the front set back is an issue for her tenants as they have to access their parking from University Avenue. Lafata feels that a safety hazard could occur when exiting University Avenue if the 6 feet front setback is not adjusted.

Lafata stated that the retaining wall located along the property line of the proposed structure could be comprised with the new construction.

Lafata expressed concerns of possible flooding if the structure is built at a higher grade than her property. In addition, Lafata expressed concern with parking limitations when having to share the main campus parking spaces.

Bossio asked what the number of units and number bedrooms that are within the Lafata's dwelling. Lafata explained that there are three units and six bedrooms.

Bossio enquired about the number of parking spaces that are provided for the tenants, and Lafata replied that there are two off-street parking spaces on her property.

Papandreas asked where the tenants are currently parking. Lafata explained that the tenants are utilizing the public parking along Ensign Avenue.

There being no further comments in opposition to the petitions, Bossio granted Mardis a five-minute rebuttal.

Mardis stated that if the building is moved left, then that will provide for greater visibility for her tenants to exit the premises and there will be no greater visual impairment than the traffic currently provides when moving South on University Avenue. Mardis explained that the height of the proposed structure will be very comparable with the height of the Lafata's building and the parking spaces that are associated with the proposed building will be assigned.

Bossio stated that he felt that the proposed structure would be good to increase density and keep the students concentrated in the appropriate area.

Shamberger stated that the other Metro properties are attractive buildings and asked if traffic congestions concerns would be directed towards the engineer studies. Fletcher explained that approximately eighteen feet remain from the curb to the stair tower and the existing houses that would be razed appear to be closer to University Avenue than the proposed structure. Fletcher noted that the road behind the property is a private road which has to remain because it is a fire lane and there is limited space to work with.

Shaffer asked for the possibility of two bus stops in order to not stop traffic. Fletcher stated that the bus stop would be located on Sixth Street to eliminate traffic congestion and provide better safety for the tenants.

Cardoso addressed the issue of the structure being built at a higher grade and the possibility of flooding.

Bossio stated that the required proper drainage and curbing should prevent flooding, and if in the event of flooding, the parties can seek relief from Monongalia County Circuit Court.

Fletcher stated that the lowest level of the building will be at or near grade with Sixth Street and the foundation will be much lower than the neighboring property; approximately 25 feet lower. Building permits will be required and related considerations reviewed accordingly.

Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that it is the opinion of the Planning Division that the proposed development represents a unique opportunity to increase residential density at a site that is strategically situated between West Virginia University's campuses. Because the site is well served by public transit and is within walking and biking distance of primary destinations, the development appears to link residents to alternate modes of transportation thereby reducing auto dependency of residents and mitigating increased traffic congestion created by commuting traffic from outside the City of Morgantown.

The Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance and conditional use respectively by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined). Again, each respective conditional use and variance petition must be considered and acted upon by the Board separately.

Fletcher asked the Chair if he should read only that portion of the Staff recommendation that is specific to CU12-20 and then read the remaining portions in a similar manner. Bossio stated yes.

Fletcher stated Staff recommends approval of Case No. CU12-20 so that a "Multi-Family Dwelling" use can be developed in the O-I District as requested with the following conditions.

1. That Development of Significant Impact Site Plan petition S12-10-III be approved by the Planning Commission and related conditions performed.

2. That a minor subdivision petition combining Parcels 16, 17, 18, 20, and 21 of Tax Map 14 be approved by the Planning Commission and the final plat recorded prior to the issuance of any certificate of occupancy.
3. That the developer and/or project design professionals must meet again with the Technical Review Team prior to building permit application and incorporate all reasonable Technical Review Team recommendations in plans submitted with related building permit applications.
4. That a Landscape Plan and a Lighting Plan be submitted with the building permit application for review and approval by the Planning Division. Variance approval must be obtained should said plans not conform to the related performance standards set forth in the City Planning and Zoning Code.
5. That, prior to the issuance of a permanent certificate of occupancy, the sidewalk running along University Avenue and fronting the subject development site must be reconstructed, to the satisfaction of the City Engineer, a width of no less than six (6) feet beginning at the property boundary dividing Parcels 21 and 22 of Tax Map 14 thence to the private road driveway entrance on University Avenue; said private road driveway entrance is that which specifically connects same to the Sixth Street right-of-way.
6. That the development must meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
7. That all shared dumpsters within and serving the Metro Towers development must be enclosed with masonry materials at least six (6) feet in height and include opaque gates.
8. That fire lanes, if applicable, must be provided to the satisfaction of the City's Fire Marshall.
9. That the petitioner work with Mountain Line Transit to develop a shelter facility on or near the project site to improve access and utilization of public transit by residents of and near the Metro Towers "campus".
10. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact 1 – Congestion in the streets is not increased, in that:

The City Engineer has determined that the redevelopment and reuse of the former Grand Central office complex, including the proposed fifth building, did not require a traffic impact study. Because the site is well served by public transit and is within walking and biking distance of primary

destinations, the development appears to link residents to alternate modes of transportation thereby lessening auto dependency and reducing additional traffic to existing congestion resulting from commuter-related traffic. Improvements have and will be made to pedestrian walkways.

Finding of Fact 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed multi-family dwelling use and common areas will meet or exceed all related Building Code and Fire Code standards prior to the issuance of occupancy permits.

Finding of Fact 3 – Provision of adequate light and air is not disturbed, in that:

The proposed development complies with maximum building height requirements and the significant topographical changes of the development site appear to have the greater impact on light distribution and air circulation within the immediate area. The proposed building height above the grade of University Avenue appears to be very similar to existing buildings.

Finding of Fact 4 – Overcrowding of land does not result, in that:

Due to the depth of the property between University Avenue and the Sixth Street right-of-way and the setback standards for the O-I District, the buildable area of the site is significantly diminished as illustrated on the proposed site plan. Any redevelopment of the subject site would require setback variance relief. If the zoning classification for the subject property was R-3 as the surrounding Sunnyside Neighborhood is to the North, South and West, the proposed setbacks would exceed the minimum R-3 side setback requirements by ten feet on each side. The height of the proposed building is less than the maximum building height for both the O-I District and the R-3 District. With the addition of the proposed building, there remains a surplus of approximately 39 parking spaces within the Metro Towers “campus”. The scale and density of the proposed apartment building appears to be reflect the scale and density within the Metro Towers “campus”.

Finding of Fact 5 – Undue congestion of population is not created, in that:

With the addition of the proposed building, there remains a surplus of approximately 39 parking spaces within the Metro Towers “campus”. The scale and density of the proposed apartment building appears to be reflect the scale and density within the Metro Towers “campus”. Conditional use approval was granted for the “East” and “West” buildings of the Metro Towers “campus”.

Finding of Fact 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The site appears to be adequately served by existing public utility, infrastructure, and service facilities along with public transportation.

Finding of Fact 7 – Value of buildings will be conserved, in that:

The significant investment made in the existing buildings, and the construction of two multi-family structures, in addition to the proposed construction of the third multi-family structure should enhance the value and market performance for continued multi-family housing interest and investment within the Sunnyside Neighborhood.

Finding of Fact 8 – The most appropriate use of land is encouraged, in that:

The addition of the multi-family structure on the development site appears to represent a unique opportunity to return and modestly increase residential densities to a site that is strategically situated between WVU's campuses within the Sunnyside Neighborhood.

Shaffer moved to approve conditional use petition CU12-20 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

- F. **V12-38 / Metro Towers, LLC University Avenue:** Request by Lisa Mardis of Project Management Services, on behalf of Metro Towers, LLC, for variance relief from Article 1343.04 as it relates to setbacks and encroachments on University Avenue; Tax Map 14, Parcels 16, 17, 18, 20, and 21; O-I, Office and Institutional District.

*NOTE: The Staff report, public hearing, and Board discussion were conducted above.*

Fletcher stated that Staff recommends approval of Case No. V12-38 as requested, with the following condition, so that the front setback may extend no closer than six (6) feet from the front parcel boundary; so that the rear setback may extend no closer than two (2) feet from the rear parcel boundary; and, so that the side setbacks may extend no closer than fifteen (15) feet from the respective side parcel boundaries.

1. That the petitioner work with the City to study the feasibility and practicality of reducing the width of the Sixth Street right-of-way for the purpose of increasing the building's front setback along University Avenue.
2. Should site planning and engineering designs determine, to the satisfaction of the City Engineer, that encroachment further into the southern side setback variance granted herein is necessary and/or prudent to protect and preserve the integrity of Parcel 22 of Tax Map 14 and the structure presently contained thereon, the southern side setback may be zero (0) feet; provided, the frontage width of the proposed apartment building shall remain no greater than 208 feet as shown on the site plan submitted to the Board for review and approved herein.

Papandreas made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The proposed site plan identifies the parcel configuration and the O-I District required setbacks for the subject development site, which illustrate that very limited buildable area appears to remain for any type of development given the geometry of the parcels, required building envelope, and the topography of the site, and the alignment of the private road connection University Avenue to Sixth Street.

Finding of Fact 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that very few, if any, of the existing structures within the immediate O-I District comply with the rather large front, side and rear setback standards. The Board granted similar variances for buildings East and West (currently under construction) on October 19, 2011.

Finding of Fact 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed setback encroachments appear to be consistent with the setbacks afforded to multi-family residential development within the neighboring R-3 District; the development pattern for which should therefore not be detrimental to the public welfare nor impede upon adjoining property or improvements. Additionally, if the zoning classification for the subject site was R-3, as it is within the surrounding Sunnyside Neighborhood, the proposed site setbacks would be ten (10) feet more on each side than the minimum R-3 District standard.

Finding of Fact 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The majority of redevelopment over the last several years within the immediate O-I District appears to have been multi-family residential construction. The ability of the subject multi-family development to increase the market value of properties within the immediate area should not be adversely impacted by the requested setback variances. The setback variances should not contribute to nor mitigate traffic congestion currently present on neighboring streets from what appears to be commuter-related traffic.

Papandreas moved to approve variance petition V12-38 as requested with Staff recommended conditions; seconded by Shamberger. Motion carried unanimously.

- G. CU12-21 / Metro Towers, LLC / University Avenue:** Request by Lisa Mardis of Project Management Services, on behalf of Metro Towers, LLC, for conditional use approval to provide “off-site parking” under Article 1365.07 for a “Multi-Family Dwelling” development on University Avenue; Tax Map 14, Parcels 16, 17, 18, 20, and 21; O-I, Office and Institutional District.

*NOTE: The Staff report, public hearing, and Board discussion were conducted above.*

Fletcher stated that Staff recommends approval of Case No. CU12-21 with the following conditions:

1. That an accessible route to the off-site parking area meet all applicable federal Fair Housing and Americans with Disabilities Act standards as determined by the City's Chief Building Code Official.
2. That the off-site parking facility be encumbered by an easement or similar agreement, to the satisfaction of the Planning Division, which is duly executed and acknowledged and specifies that the land upon which the subject off-site parking facility is located is encumbered by the parking use of the subject development for no less than fifty (50) parking spaces. That this instrument must bind the use for the life of the multi-family dwelling use approved under conditional use petitioner CU12-20. That said instrument must be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia. That the Certificate of Occupancy for the subject dwelling space shall be contingent upon the continuance of said agreement and encumbrance and should said agreement and encumbrance be annulled for any reason at any time, said Certificate of Occupancy shall be revoked upon written notification by the Planning Division. That a valid and

current copy of said instrument must be made available at the request of Planning Division.

3. That the proposed fifty (50) spaces shall have signs noting the rental unit for which the spaces are reserved. That such signage shall be 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finished surface of the parking stalls. That the text on the sign state "This space is reserved for residents located at [address assigned by City Engineer] only, per City Code 1365.07(D)."
4. That the conditional use approval granted herein is specific to the petitioner and may not be transferred.

Shamberger made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact 1 – Congestion in the streets is not increased, in that:

The City Engineer has determined that the redevelopment and reuse of the former Grand Central office complex, including the proposed fifth building, did not require a traffic impact study. The location of the proposed parking is situated within the overall Metro Tower Development. This area is within the required 300 feet of the principal use and is within a district that permits commercial parking lots as a permitted right. The minimum parking requirement for all five (5) buildings within the Metro Towers "campus" (existing, under construction, and proposed), based on the number of units and respective bedroom composition, is 269 spaces, which leaves a surplus of 39 parking spaces. Because the site is well served by public transit and is within walking and biking distance of primary destinations, the development appears to link residents to alternate modes of transportation thereby lessening auto dependency and reducing additional traffic to existing congestion resulting from commuter-related traffic.

Finding of Fact 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed off-site parking location is situated in an existing surface parking lot facility that will be utilized for the entire development.

Finding of Fact 3 – Provision of adequate light and air is not disturbed, in that:

No new structure is proposed to provide the off-site parking facility that would affect existing light distribution or air flow patterns. The off-site parking area is located in an existing surface parking area.

Finding of Fact #4 – Overcrowding of land does not result, in that:

The Planning and Zoning Code provides the opportunity of dedicating off-premise parking to mitigate overcrowding development patterns. No new structures are proposed to provide the off-site parking; it will be located and dedicated in an existing surface parking area.

Finding of Fact 5 – Undue congestion of population is not created, in that:

The Planning and Zoning Code provides the opportunity of dedicating off-premise parking to mitigate population congestion. No new structures are proposed to provide the off-site parking; it will be located and dedicated in an existing surface parking area.

Finding of Fact 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:



The conditional use request will neither increase nor decrease demand for said public infrastructure as it appears to serve existing and future demand.

Finding of Fact 7 – Value of buildings will be conserved, in that:

The off-site parking appears necessary to continue private sector efforts of razing functionally obsolete structures on very small parcels thereby adding value and incentive for continued redevelopment, investment and property maintenance.

Finding of Fact 8 – The most appropriate use of land is encouraged, in that:

The location of the proposed off-site parking area utilizes an existing parking lot that exceeds the minimum parking requirement associated with the current and proposed development.

Shamberger moved to approve conditional use petition CU12-21 as requested with Staff recommended conditions; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mardis that the Board's decisions can be appealed to Circuit Court within thirty days and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**H. V12-40 / Tudors Biscuit World / 376 High Street:** Request by Joe Horvath, on behalf of HSBW, LLC (DBA Tudors Biscuit World), for variance relief from Article 1369.07(I) as it relates to wall signage at 376 High Street; Tax Map 26A, Parcel 111; General Business District.

Papandreas announced that he is a member of the Main Street Morgantown Board of Directors and recruited the petitioner to locate a Tudors Biscuit World in downtown. As such, Papandreas stated that he believed he should recuse himself from the discussions and decisions on this petition. Papandreas left Council Chambers.

Fletcher read the Staff Report stating that the petitioner seeks to erect an awning sign at the *Tudor's Biscuit World* that has recently opened at 376 High Street. Addendum A of this report illustrates the location of the subject site.

The proposed awning signage, which is considered wall signage, includes the following four copy areas:

- Valance "Tudor's Biscuit World" is 13.5 square feet.
- Larger centered logo is 18 square feet.
- Two smaller logos on awning ends are 2.5 square feet each for a subtotal of 5 square feet.
- The total area of the awning signage is 34 square feet.

Article 1369.07(I)(1) provides that the maximum wall sign area in the B-4 District is determined by multiplying the storefront width in feet by 0.4. The *Tudor's Biscuit World* storefront width is approximately 25 feet. Therefore, the maximum area for the subject wall signage is ten (10) square feet. As such, the proposed sign requires a 24 square foot variance.

Bossio recognized the petitioner, Joe Horvath of 172 Meadow Ridge, who stated that he is requesting an awning sign for the storefront, instead of a retractable awning due to the nearness of a tree and utility pole that is within close proximity of the business.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of the request.

Bossio recognized Terri Cutwright, Executive Director of Main Street Morgantown, who stated that her organization is pleased to have Tudor's Biscuit World on downtown High Street after the business was recruited. Cutwright stated that the location of Tudor's is in a challenging area, at the end of a block, where there are visibility issues with the traffic lights and a tree located in front of the restaurant. Cutwright asked the Board to consider approval for the sign variance request.

There being no further comments in favor of the petition, Bossio asked if anyone was present to speak in opposition of the petition. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that one of the stated purposes within the Planning and Zoning Code for sign regulations is to:

“...encourage the effective use of signs as a means of communication in the City, to maintain and enhance the pleasing look of the City, which attracts to the City continued economic investment; to preserve Morgantown as a community that is attractive to business, to residents and to visitors...” [Article 1369.01(A)]

Size restrictions are one of several means to accomplish this policy objective. The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (~~deleted matter struck through~~; new matter underlined).

Shamberger stated that there was an email of opposition that was reported to the Planning Division.

Fletcher read the email from Kathy Hanco that was received on December 4, 2012. Hanco stated that asked that the variance relief request for the signage on Tudor's Biscuit World be denied as there are rules that need to be followed and feels that granting this request would defeat the purpose of the said rules.

Cardoso asked for the Board to explore another way to approve the sign so the variance isn't so great.

Shamberger stated that the signage on the upper part of the awning could be discussed.

Fletcher stated that there may be a couple of different options to reduce the extent of the variance request. The size of the lettering could be reduced, the size of the logo on the top of the awning could be condensed, or the small logos could be removed from each side of the awning.

Shamberger did note that because of the corner location of the store that the sign does need to be noticeable from Fayette Street.

Bossio mentioned that any design is allowable inside the glass of the store and sandwich boards are permissible.

Fletcher stated that there is another business that will be located directly beside Tudor's in the near future, and mentioned that the logo on the south end of the awning may not be visible if the adjoining new business developed and awning as well.

Shamberger noted that the slope of the business next door has a deep slope with a much larger canvas to work with in the future.

Bossio noted that sandwich boards add clutter to the streets, and feels that the end logos on the awning would be eye catching for the foot traffic on High Street.

Shamberger stated that he doesn't feel the logo on the top of the awning is necessary and should be removed.

Papandreas stated that he feels that keeping the end caps and deleting the logo on the top slant would be the best.

Bossio asked Ms. Cutwright if the Main Street Morgantown sign grant committee had reviewed this request. Cutwright stated that a request was made but a response had not been made.

Bossio asked Mr. Horvath if he could modify the logo part of the sign. Horvath stated that people know the Tudors Biscuit World logo and does not want to change the design of the logo part of the sign.

Bossio asked Mr. Horvath if he could utilize the color and the bottom 18 inches of the awning.

Horvath stated that if he had to modify the sign, then he suggested taking off the logo from the top of the awning.

Fletcher stated that if the logo on the top of the awning is removed, then it would reduce the variance request by 18 square feet and would allow for the logos that are on the side to be moved to the front valance.

The Board members agreed to the aforementioned suggestions and to the lettering being no higher than 18 inches.

Bossio asked if Mr. Horvath had to get corporate approval for the sign changes prior to the Board approving. Mr. Horvath stated that he did not have to get prior corporate approval.

Horvath asked if he could delete the proposed top logo and lettering from the top of the awning and keep the rest of the proposed signage unchanged.

Fletcher stated that the new sign would need a 16 foot variance as opposed to a 24 foot variance that was originally requested.

Cardoso made a motion to find in the affirmative for all the Findings of Facts as revised by Staff; seconded by Shamberger. Motion carried unanimously.

*NOTE: The following Findings of Fact were included in the motion.*

Finding of Fact #1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

It appears that the pole on which the traffic and pedestrian signals and related equipment and hung, the light pole and hanging basket, and the street tree obstruct the view of the storefront and related signage from several vehicular and pedestrian viewpoints.

Finding of Fact #2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be a number of non-conforming signs along High Street that exceed the maximum area standards for wall signs.

Finding of Fact #3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed awning sign appears to be consistent with similar awning signs within the downtown commercial district.

Finding of Fact #4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The nature of the variance relief requested cannot contribute to nor mitigate existing traffic congestion and will not alter the existing land use characteristics of the commercial building or downtown commercial district.

Cardoso moved to approve variance request petition V12-40 with a 16 foot variance and the condition that copy on the subject awning sign is restricted to the valance portion of the awning that runs parallel with the building and the sides of the awning visible to pedestrians traveling north and south along the adjoining sidewalk; and, that copy is not permitted above the valance portion of the awning; specifically, that portion of the awning that extends at an angle beginning above the valance and ending at the top of the awning. The motion was seconded by Shamberger. Motion carried unanimously.

Bossio reminded Mr. Horvath that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

**V. OTHER BUSINESS:**

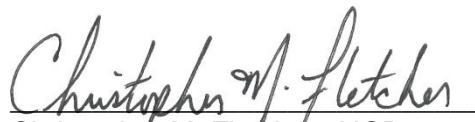
- A.** Public Comments (matters not on the agenda): None.
- B.** Staff Comments: Fletcher announced that the City Council approved reappointments for both Cardoso and Shaffer to continue their service with the Planning Commission. Fletcher reminded the Board that leadership elections for the chair and vice-chair for the 2013 calendar year will be included on the January agenda as required by State Code.

**VI. ADJOURNMENT: 8:40 PM**

MINUTES APPROVED:

January 16, 2013

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP